

# STATE OF NEW YORK

3068--A

2019-2020 Regular Sessions

## IN SENATE

February 1, 2019

Introduced by Sens. KRUEGER, BAILEY, HOYLMAN, KAVANAGH, LIU, SERRANO, STEWART-COUSINS -- read twice and ordered printed, and when printed to be committed to the Committee on Environmental Conservation -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the environmental conservation law, in relation to prohibiting polystyrene waste

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "polystyrene waste reduction act".

3 § 2. Article 27 of the environmental conservation law is amended by  
4 adding a new title 20 to read as follows:

### TITLE 20

#### POLYSTYRENE WASTE REDUCTION

##### Section 27-2001. Definitions.

8 27-2003. Prohibited disposable food service containers.

9 27-2005. Required compostable or recyclable disposable food  
10 service containers.

11 27-2007. Unique packaging or financial hardship waiver.

##### § 27-2001. Definitions.

13 As used in this title:

14 1. "Affordable" means purchasable for not more than fifteen percent  
15 more than the purchase cost of the non-compostable or non-recyclable  
16 alternative.

17 2. "Agency" means any state department, agency, board, public benefit  
18 corporation, public authority, or commission.

19 3. "Agency or municipal facility" means any building, structure or  
20 vehicle owned or operated by the agency or municipality.

21 4. "Agency or municipal contractors and lessees" means any person or  
22 entity that has a contract with an agency or a municipality for public

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 works or improvements to be performed, for a franchise, concession or  
2 lease of property, for grant monies or goods and services or supplies to  
3 be purchased at the expense of the agency or municipality or to be paid  
4 out of monies deposited in the treasury or out of trust monies under the  
5 control or collected by the agency or municipality.

6 5. "Agency or municipal facility food provider" means an entity that  
7 provides, but does not sell, prepared food in agency or municipal facil-  
8 ities.

9 6. "Chain retail food vendor" means a retail food vendor with five or  
10 more locations that conduct business under the same business name or  
11 operate under common ownership or management or pursuant to a franchise  
12 agreement with the same franchisor.

13 7. "Compostable" means all the materials in the product or package  
14 meet the American Society for Testing and Materials (ASTM) International  
15 Standard Specification for Compostable Plastics D6400, and will:

16 (a) undergo degradation by biological processes during composting in  
17 an appropriate municipal or industrial composting facility to yield  
18 carbon dioxide, water, inorganic compounds, and biomass at a rate  
19 consistent with other known compostable materials in similar facilities;  
20 and

21 (b) leave no visible, distinguishable or toxic residue, including no  
22 adverse impact on the ability of composts to support plant growth once  
23 the finished compost is placed in soil.

24 8. "Home compostable" means all the materials in the product or pack-  
25 age conform with the Vincotte OK Compost Home certification using the  
26 European Norm 13432 standard, or a comparable standard as determined by  
27 the department, and will:

28 (a) undergo degradation by biological processes during composting in a  
29 home compost pile or device to yield carbon dioxide, water, inorganic  
30 compounds, and biomass at a rate consistent with other known compostable  
31 materials in similar facilities; and

32 (b) leave no visible, distinguishable or toxic residue, including no  
33 adverse impact on the ability of composts to support plant growth once  
34 the finished compost is placed in soil.

35 9. "Disposable food service containers" means all containers, bowls,  
36 plates, trays, cartons, cups, lids and other items that are designed or  
37 generally recognized by the public as being designed for one-time use to  
38 hold, contain, or transport foods, including without limitation,  
39 containers for takeout foods and/or leftovers from partially consumed  
40 meals prepared by retail food vendors. The term "disposable food  
41 service container" does not include items composed entirely of aluminum  
42 or polystyrene foam coolers and ice chests that are intended for reuse.

43 10. "Municipality" means a village, town, city, or county, or any  
44 designated agency thereof.

45 11. "Polystyrene foam" means blown polystyrene and expanded and  
46 extruded foams that are thermoplastic petrochemical materials utilizing  
47 a styrene monomer and processed by any number of techniques including,  
48 but not limited to, fusion of polymer spheres, injection molding, foam  
49 molding, and extrusion-blown molding. Polystyrene foam is generally  
50 used to make cups, bowls, plates, trays, clamshell containers, meat  
51 trays and egg cartons. Such term shall not include rigid polystyrene.

52 12. "Prepared food" means food or beverages, which are serviced, pack-  
53 aged, cooked, chopped, sliced, mixed, brewed, frozen, squeezed or other-  
54 wise prepared (collectively "prepared") for individual customers or  
55 consumers. For the purpose of this title, prepared food includes takeout

1 food, but does not include raw, butchered meats, pork, fish, seafood  
2 and/or poultry sold from a butcher case or similar retail appliance.

3 13. "Recyclable" means material that can be sorted, cleansed and  
4 reconstituted using available recycling collection programs for the  
5 purpose of using the altered form in the manufacture of a new product.  
6 Recycling does not include burning, incinerating, converting, or other-  
7 wise thermally destroying solid waste.

8 14. "Restaurant" means any establishment that sells prepared food for  
9 consumption on, near, or off its premises. For purposes of this title,  
10 the term includes a restaurant operating from a temporary facility,  
11 cart, vehicle or mobile unit.

12 15. "Retail food vendor" means any store, shop, sales outlet, or other  
13 establishment, including a grocery store, delicatessen or restaurant  
14 that sells prepared food.

15 § 27-2003. Prohibited disposable food service containers.

16 1. Retail food vendors shall not possess, sell, or offer for use  
17 disposable food service containers that contain polystyrene foam. This  
18 subdivision shall not apply to polystyrene foam containers used for  
19 prepackaged food that have been filled and sealed prior to receipt by  
20 the retail food vendors.

21 2. Agency or municipal facility food providers shall not possess,  
22 sell, or offer for use disposable food service containers that contain  
23 polystyrene foam.

24 3. Agencies and municipalities shall not purchase, acquire or use  
25 disposable food service containers that contain polystyrene foam.

26 4. Agency or municipal contractors and lessees shall not possess,  
27 sell, or offer for use disposable food service containers that contain  
28 polystyrene foam in agency or municipal facilities or while performing  
29 under an agency or municipal contract or lease.

30 5. Nothing in this section shall be construed to govern the activities  
31 of contractors and lessees that occur outside of the state or activities  
32 of contractors and lessees that occur with entities other than agencies  
33 or municipalities.

34 § 27-2005. Required compostable or recyclable disposable food service  
35 containers.

36 1. All retail food vendors, agencies, municipalities, agency and  
37 municipal facility food providers, and municipal contractors and lessees  
38 operating in municipal facilities or performing under a municipal  
39 contract or lease using any disposable food service containers shall use  
40 a suitable affordable compostable, home compostable, or recyclable prod-  
41 uct, unless there is no suitable affordable compostable, home composta-  
42 ble, or recyclable product available as determined by the department  
43 pursuant to a waiver in accordance with section 27-2007 of this title.

44 2. Nothing in this section shall be construed to govern the activities  
45 of contractors and lessees that occur outside of the state or activities  
46 of contractors and lessees that occur with entities other than agencies  
47 or municipalities.

48 § 27-2007. Unique packaging or financial hardship waiver.

49 1. Any not-for-profit corporation, regardless of its income, and any  
50 retail food vendor that had a gross income under five hundred thousand  
51 dollars per location on their annual income tax filing for the most  
52 recent tax year and is not part of a chain retail food vendor may  
53 request from the department, in a manner and form established by the  
54 department, a unique packaging or financial hardship waiver of the  
55 requirements of this title. Such waiver request may apply to one or more

1 types of disposable food service containers possessed, sold, or offered  
2 for use by any such not-for-profit corporation or retail food vendor.

3 2. The department shall grant such waiver if such not-for-profit  
4 corporation or retail food vendor proves:

5 (a) that no reasonably feasible alternative exists to a specific and  
6 necessary type of polystyrene foam disposable food service container; or

7 (b) that there is no comparable alternative product not composed of  
8 polystyrene foam that would cost the same as or less than the types of  
9 disposable food service container composed of polystyrene foam and that  
10 the purchase or use of an alternative product not composed of polystyr-  
11 ene foam would create an undue financial hardship; or

12 (c) that there is no suitable affordable compostable, home composta-  
13 ble, or recyclable product available as an alternative to any type of  
14 disposable food service container.

15 3. Such unique packaging or financial hardship waiver shall be valid  
16 for twelve months and shall be renewable upon application to the depart-  
17 ment. A pending application for such waiver shall be a defense to any  
18 notice of violation issued pursuant to this title to which such pending  
19 application relates and such notice of violation shall be dismissed.

20 § 3. The environmental conservation law is amended by adding a new  
21 section 71-2730 to read as follows:

22 § 71-2730. Enforcement of sections 27-2003 and 27-2005 of this chapter.

23 1. Any person who shall violate section 27-2003 or 27-2005 of this  
24 chapter shall receive a warning notice for the first such violation. A  
25 person shall be liable to the state of New York for a civil penalty of  
26 not more than two hundred fifty dollars for the first violation after  
27 receiving a warning, not more than five hundred dollars for the second  
28 violation in the same calendar year, and not more than one thousand  
29 dollars for each subsequent violation in the same calendar year. For the  
30 purposes of this section, each commercial transaction shall constitute  
31 no more than one violation. A hearing or opportunity to be heard shall  
32 be provided prior to the assessment of any civil penalty.

33 2. (a) The department, the department of agriculture and markets, the  
34 department of health, and the attorney general are hereby authorized to  
35 enforce the provisions of sections 27-2003 and 27-2005 of this chapter.

36 (b) The provisions of section 27-2003 or 27-2005 of this chapter may  
37 also be enforced by a village, town, city, or county and the local  
38 legislative body thereof may adopt local laws, ordinances or regulations  
39 consistent with this title providing for the enforcement of such  
40 provisions.

41 3. Any fines that are collected by the state during proceedings by the  
42 state to enforce the provisions of section 27-2003 or 27-2005 of this  
43 chapter shall be retained by the state. Any fines that are collected by  
44 a municipality during proceedings by the municipality to enforce such  
45 provisions within the municipality shall be retained by the munici-  
46 pality.

47 § 4. This act shall take effect on the three hundred sixty-fifth day  
48 after it shall have become a law. Effective immediately the addition,  
49 amendment and/or repeal of any rule or regulation necessary for the  
50 implementation of this act on its effective date are authorized to be  
51 made and completed on or before such date.